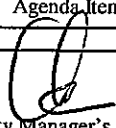




Report to the Auburn City Council

Action Item
Agenda Item No. 12
 City Manager's Approval

To: Mayor and City Council Members
From: Valerie Harris, Chief Retiree
Date: July 25, 2011
Subject: Second Reading of Ordinances for Solicitations and Aggressive Solicitations

The Issues

Should the City Council Adopt a Second Reading of an Ordinance to Amend the Auburn Municipal Code relating to door to door solicitations and add a new ordinance relating to aggressive solicitations (panhandling)?

Conclusions and Recommendations

Staff recommends that the City Council take the following action:

1. Hold a Second Reading, by Title only, of an Ordinance Amending Chapter 116 of the Auburn Municipal Code relating to door to door solicitations (Attachment 1).
2. Hold a Second Reading, by Title only, of an Ordinance adding Chapter 121 to the Auburn Municipal Code relating to aggressive solicitations (panhandling) (Attachment 2).

Background

On June 27, 2011 the Auburn City Council held a duly noticed public hearing and unanimously adopted both the proposed amendment changes to the Solicitation Ordinance Section 116 and the adoption of the Aggressive Solicitation Ordinance Section 121.

In 1973, existing Chapter 116 was added to the City's municipal code, and it was most recently revised in 1977. The Solicitation Ordinance Section 116 was adopted with the following revisions.

- **116.07 Term of Permit:**

Previously permits could be issued for a period of thirty (30) calendar days, but in no event issued for more than six months. The newly proposed change would allow for valid permits to be issued for thirty (30) calendar days, but in no event for more than **one year**.

- **116.03 Solicitation Permit Required:**

No person shall engage in solicitation, as that term is defined in section 116.02, within the city without having first obtained a permit from the city manager; but

when a permit has been issued to any person, the agents and solicitors for such person shall not be required to obtain individual permits. **Currently valid non-profit organizations shall be required to obtain the necessary solicitation permit, however associated application and/or processing fees shall be waived for upon proof of recognized non-profit status with the State of California.**

The purpose behind the issuance of permits for a period of up to one year is to minimize the impact upon City staff and those individuals requesting permits. The City wishes to minimize the inconvenience and expenditure of time and money required to obtain a solicitation permit. Further, the City continues to be a strong supporter of the many service clubs and non-profit organizations that exist in and around the greater Auburn area. These organizations contribute greatly to the quality of life we have come to appreciate and value. The permit application process with the stated fee waiver will have a negligible minimal impact upon these organizations and their current fundraising and solicitation efforts.

A Second Reading is required to finalize the processing of the Ordinance. Should the City Council decide to adopt the Second Reading of the Ordinance on July 25, 2011, the Ordinance will become effective in thirty (30) days.

Alternatives Available; Implications of Alternatives

We have identified following options for the City Council to consider:

1. Hold a Second Reading and adopt both Ordinances as presented;
2. Deny the Second Reading; or,
3. Amend the Ordinances and Introduce and hold a first reading, by title only, one or both as amended.

Fiscal Impact

The staff and legal services necessary to prepare this ordinance are budgeted resources. Adoption of the ordinance will update the municipal code consistent with current law, thereby decreasing the City's potential liability and need for legal services. The expansion of the scope of the regulation of solicitations should not meaningfully affect the workload of city police officers.

Additional Information:

Please see the following attachments for more details:

ATTACHMENTS –

1. Draft Solicitation Ordinance
2. Draft Aggressive Solicitation Ordinance

EXHIBIT –

- A. June 27, 2011 City Council Staff Report with Attachments (On File with the City Clerk)



ATTACHMENTS

ORDINANCE NO. 11-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN AMENDING
CHAPTER 116 OF THE AUBURN MUNICIPAL CODE REGARDING SOLICITORS

THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS FOLLOWS

Section One: The City Council of the City of Auburn hereby finds:

1. Individuals and organizations have visited and continue to visit private residential properties, and privately-owned businesses, to peddle goods, wares, merchandise, and services.

2. Some residents and business owners find these activities to not only be threatening but also an invasion of privacy.

3. In addition, some individuals who have claimed to be solicitors have committed fraud and other crimes against residents and business owners.

4. Some solicitors have created a negative, threatening and unwelcoming environment in public places.

5. Unregulated solicitation within the City has become disturbing and disruptive to residents and businesses, and has contributed not only to the loss of access to and enjoyment of public places and private residences, but also to an enhanced sense of fear, intimidation and disorder.

6. It is the intent of the City Council in enacting this ordinance to improve the quality of life and economic vitality of the City, and to protect the safety of the general public against abusive conduct of persons engaged in solicitation, by imposing reasonable manner and place restrictions on solicitation while respecting the constitutional rights of free speech for all.

1 Section Two: Chapter 116 of the Auburn Municipal Code is hereby
2 repealed.

3
4 Section Three: A new Chapter 116 of the Auburn Municipal Code is
5 hereby adopted in the form attached hereto as Exhibit A.

6 Section Four: This Ordinance shall take effect thirty days following its
7 adoption as provided by Government Code Section 36937.

8
9 Section Five: Should any provision, section, paragraph, sentence or
10 word of this Ordinance be rendered or declared invalid by any court of
11 competent jurisdiction or by reason of any preemptive legislation, the
12 remaining provisions, sections, paragraphs, sentences or words of this
13 Ordinance shall remain in full force and effect.

14 Section Six: The City Clerk shall certify to the passage and adoption
15 of this Ordinance and shall give notice of its adoption as required by law.

16
17 DATED: _____, 2011

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19 _____
20 William W. Kirby M.D., Mayor

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22
23 ATTEST:

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25 _____
26 Joseph G. R. Labrie, City Clerk

27 I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify
28 that the foregoing ordinance was duly passed at a regular meeting of the City
Council of the City of Auburn held on the _____ day of _____ 2011 by
the following vote on roll call:

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Ayes:
Noes:
Absent:

Joseph G. R. Labrie, City Clerk

APPROVED AS TO FORM:

Michael G. Colantuono, City Attorney

EXHIBIT A

Chapter 116

SOLICITATION

Section

116.01	Purpose; Intent
116.02	Definitions
116.03	Solicitation Permit Required
116.04	Exemptions
116.05	Application for Permit
116.06	Issuance of Permit
116.07	Term of Permit
116.08	Identification Card
116.09	Revocation of Permit
116.10	Appeals
116.11	Manner of Solicitation and Prohibition
116.12	Violations; Penalties

116.01 Purpose; Intent.

(A) The purpose of this chapter is to regulate solicitation in the city to allow residents to protect their peace and tranquility, to allow the free and safe flow of pedestrian and vehicular traffic, and to deter fraud and other criminal behavior. It is the intent of this chapter to respect the rights of free expression guaranteed by the California and United States Constitutions; to constitute reasonable, content-neutral, time, place and manner restrictions; and to impose the smallest burden on expressive activity necessary to accomplish the objectives of this chapter. This chapter shall be construed in light of this intent.

(B) The exclusion of religious and political motivations from the purposes for solicitation regulated by this chapter is intended to provide greater protection for such expressive activity as required by such judicial decisions as *Watchtower Bible & Tract Soc'y of New York, Inc. v. Village of Stratton*, 536 U.S. 150 (2002) and not to require city officials to determine what does and does not constitute bona fide religious and political motives except as necessary to do so. Accordingly, in the enforcement of this chapter, city officials shall accept claims that activity is politically or religiously motivated unless evidence is obtained demonstrating those claims to be untruthful.

116.02 Definition.

(A) "Solicit" and "Solicitation" shall mean the request, directly or indirectly, of money, credit, property, financial assistance, patronage or other things of value; hawking, peddling, or vending for charitable (as defined in this section) or commercial purposes; or offering to perform services for payment, which activity is conducted door to door, in any place of public

accommodation, in any place of business open to the public generally, on city streets and sidewalks, in the public parks, or in any public places. These words shall also mean and include the following methods of securing such money, patronage, credit, property, financial assistance or other thing of value:

- (1) Any oral or written request;
- (2) The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication, unless such handbill or written advertisement has been placed within a business open to the public generally with the express permission of the owner or operator of such business;
- (3) The offer, sale or taking of orders for any goods, services, merchandise, wares or other tangible items.

A solicitation, as defined in this subsection, shall be deemed completed when made, whether or not the person making the same receives any contribution or makes any sale referred to in this subsection.

(B) "Charitable" shall mean and include the words philanthropic, social service, welfare, benevolent, educational, and fraternal, either actual or purported, but not religious or political.

116.03 Solicitation Permit Required.

No person shall engage in solicitation, as that term is defined in section 116.02, within the city without having first obtained a permit from the city manager; but when a permit has been issued to any person, the agents and solicitors for such person shall not be required to obtain individual permits. Currently valid non-profit organizations shall be required to obtain the necessary solicitation permit, however associated application and/or processing fees shall be waived upon proof of recognized non-profit status with the State of California.

116.04 Exemptions.

The provisions of this chapter shall not apply to solicitations made upon premises owned or occupied by the organization on whose behalf such solicitation is made.

116.05 Application Permit.

(A) An application for permit to solicit shall be made to the city manager upon forms prescribed by the city manager and signed under penalty of perjury. The application shall be filed with the city manager at least seven calendar days before a permit to conduct a solicitation may become effective; provided, however, that the city manager may for good cause shown allow the filing of a late application. The city manager shall grant or deny the permit within five business days after the application is made. In the event the city manager fails to act upon a permit within the time prescribed herein, the permit shall be deemed granted.

(B) An application for a solicitation permit shall contain at least the following information: address, telephone and other contact information for the applicant; the purpose for which the solicitation is to be made; the total amount of any funds to be raised thereby, if any; and the use or disposition to be made of any receipts; an outline of the method or

methods to be used in conducting the solicitations, including dates and times for the commencement, conduct and termination of the solicitation; a statement to the effect that if a permit is granted, it will not be used or represented in any way as an endorsement by the city or by any department, officer or employee thereof; the names of other cities or unincorporated areas in which the person registering has solicited or proposes to solicit within the month preceding or following the period in which the person seeks to solicit in the city; and if the applicant is unable to provide any of the foregoing information, the reasons why such information is not available.

(C) If, while any application is pending, or during the term of any permit, there is any change in fact, policy, or method that would alter the information given in the application, the applicant shall notify the city manager in writing thereof within twenty-four (24) hours after such change, provided that notice need not be given the city manager other than on a day when city hall is open for business.

116.06 Issuance of Permit.

The city manager shall issue a permit for solicitation unless any of the following have been demonstrated:

(A) That the applicant has failed to provide the required information or to articulate a reasonable basis for his or her inability to do so;

(B) That any statement made in the application is untrue; or

(C) That the proposed time, place or manner of solicitation is inconsistent with any provision of this code or other applicable law, or poses a threat to the public health or safety.

If the city manager denies a permit to any applicant, the city manager, within the time for action on an application set forth in paragraph (A) of section 116.05, shall arrange to send by registered mail or personal delivery written notice of the denial to the applicant, stating the reasons for such denial. The city manager may use fax, email or any other means reasonably calculated to give actual notice to the applicant.

116.07 Term of Permit.

All permits issued under this chapter shall be valid for a period of thirty calendar days unless renewed, revoked or suspended pursuant to the provisions of this chapter. Upon good cause shown, the city manager may issue a permit valid for more than thirty (30) calendar days, but in no event shall a permit be valid for more than one year. Any permit issued under this chapter shall not be transferable or assignable.

116.08 Identification Card.

All persons to whom permits have been issued hereunder shall furnish an identification card to each of their agents and solicitors which card is required to be in the possession of each agent and solicitor and presented upon request when soliciting in the city. Identification cards shall include the permit number, the name and address of the permittee, a statement describing the permittee's purpose and activity, the signature of the permittee or one authorized to bind the permittee, the name and signature of the solicitor to whom the card is issued, the period of time during which the solicitation is authorized, and shall have printed

prominently thereon in red: 'This identification card is not an endorsement of any solicitation by the City of Auburn or any of its officers or employees.'

116.09 Revocation of Permit.

Whenever it shall be shown that any person to whom a permit has been issued under this chapter has violated any of the provisions hereof or has violated any other law in connection with the solicitation described in the permit application, the city manager shall immediately suspend the permit and shall notify the permit holder within two business days of the suspension in the manner specified in section 116.06 for a notice of denial of a solicitation application, stating the reasons for the suspension.

116.10 Appeals.

If an applicant or permittee is aggrieved by any action of the city manager to deny, suspend or revoke a permit, he or she may appeal to the city council by filing within fifteen (15) calendar days of the decision a written statement with the city clerk setting forth reasons for the appeal. The city clerk shall set a time and place for hearing the appeal at the next regularly scheduled council meeting which occurs more than 84 hours after the notice of appeal is received and shall notify the applicant or permit holder of the time and place of hearing. The city council may affirm, reverse or affirm with conditions, the decision of the city manager and shall apply the standards of this chapter in doing so. Unless the city council unconditionally approves the permit, it shall state the reasons for its decision in writing. The action of the city council shall be final as to the city, but shall be subject to judicial review pursuant to Code of Civil Procedure section 1094.5.

116.11 Manner of Solicitation and Prohibitions.

No person while soliciting shall do any of the following:

- (A) Solicit without a permit or solicit without carrying the identification card required by this chapter on his or her person.
- (B) Solicit after a permit has expired.
- (C) Solicit at any dwelling, including but not limited to a house, apartment, or condominium where there is a sign indicating "No Solicitations," "Do Not Disturb," or any other indication that the occupants do not wish to be solicited or to have their privacy otherwise disturbed.
- (D) Touch, come into physical contact with, or affix any object to the person of any member of the public, without the express permission of that member of the public.
- (E) Persistently and importunately solicit any member of the public after such member of the public expresses his or her desire not to be solicited.
- (F) Intentionally and deliberately obstruct the free movement of any member of the public on any street, sidewalk or other place or in any place open to the public.

(G) Threaten any harm to any member of the public who declines to be solicited.

(H) Misrepresent his or her physical or mental health.

(I) Solicit for any purpose other than those specified in the application upon which the permit was issued.

(J) While the occupant of a moving vehicle, solicit, or attempt to solicit, business or contributions of money or other property, from a person within the public right-of-way who is not in that same vehicle.

(K) Solicit, or attempt to solicit, business or contributions of money or other property, from a person who is the occupant of a moving vehicle or a vehicle stopped in traffic while the solicitor is not in that same vehicle.

116.12 Violations; Penalties.

Any person who intentionally violates any provision of this chapter is guilty of a misdemeanor punishable as provided in chapter 10 of this code.

RESOLUTION NO. 93-38

RESOLUTION REGARDING SOLICITOR PERMIT APPLICATION FEES

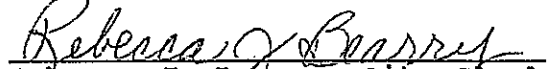
THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City Council of the City of Auburn does hereby authorize and approve setting the solicitor permit application fee at \$25.00.

DATED: March 8, 1993

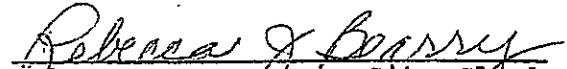

Deborah K. Yue, Mayor

ATTEST:


Rebecca J. Bearry, City Clerk

I, Rebecca J. Bearry, City Clerk of the City of Auburn, hereby certify that the foregoing resolution was duly passed at a regular meeting of the City Council held on the 8th day of March, 1993 by the following vote on roll call:

Ayes:	Barbeiro, McCord, Pisarek, Taylor, Yue
Noes:	None
Absent:	None


Rebecca J. Bearry, City Clerk

ORDINANCE NO. 11-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN AMENDING
THE AUBURN MUNICIPAL CODE TO ADD A NEW CHAPTER 121 REGARDING
AGGRESSIVE SOLICITATION

THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS FOLLOWS

Section One: The City Council of the City of Auburn hereby finds:

1. Aggressive solicitation contributes to the loss of full access to public places, as solicitors often directly or indirectly block free access to these locations.

2. Aggressive solicitation also creates an implicit threat of immediate physical harm to any persons unwilling to give money or act in the manner requested by the solicitor, and sometimes leads to violence.

3. When a person visits a bank, automated teller machine, or check cashing businesses, it is obvious that such persons have cash. Also, when at, or entering or exiting the vicinity of locations, the patrons of the locations are particularly vulnerable and more susceptible to fear and surprise than when elsewhere.

4. Motorists are sometimes confronted by persons who without permission wash their vehicle's windows at traffic intersections, despite explicit indications by drivers not to do so, and yet, because the motorist is sitting in a vehicle at an intersection, in most cases, the person cannot legally exit the car and is a "captive audience." In these situations, the threat of aggressive solicitation is particularly dangerous because the person is sometimes implicitly threatened with being "carjacked" and is often implicitly threatened for failure

1 to pay for a service already rendered. Additionally, when people in traveling
2 vehicles are approached by solicitors in the right of way, the solicitations can
3 impede traffic, and can create dangers to both vehicular and pedestrian traffic.

4
5 5. Aggressive Solicitation in a public transportation vehicle is
6 particularly threatening and dangerous because a person in a bus or a train or
7 other public transportation vehicle is in essence, a "captive audience." With
8 the inability to walk away without some personal cost, unwelcome solicitations
9 are particularly threatening and confrontations may result.

10 6. Accordingly, the City Council concludes that the limitations in
11 expressive activity included in this ordinance are reasonably necessary to
12 prevent actual and perceived assaults and traffic safety hazards and to
13 preserve the public peace. Further, the City Council finds that sufficient
14 alternative locations are available within the City for solicitations of this kind to
15 occur that the balance the City Council has struck between protecting the
16 public and facilitating solicitation is appropriate.

17
18 Section Two: Chapter 121 is hereby added to the Auburn Municipal Code
19 in the form attached hereto as Exhibit A.

20 Section Three: This Ordinance shall take effect thirty days following its
21 adoption as provided by Government Code Section 36937.

22
23 Section Four: Should any provision, section, paragraph, sentence or
24 word of this Ordinance be rendered or declared invalid by any court of
25 competent jurisdiction or by reason of any preemptive legislation, the
26 remaining provisions, sections, paragraphs, sentences or words of this
27 Ordinance shall remain in full force and effect.

1 Section Five: The City Clerk shall certify to the passage and adoption
2 of this Ordinance and shall give notice of its adoption as required by law.

3
4 DATED: _____, 2011

5
6 _____
7 William W. Kirby M.D., Mayor

8
9
10 ATTEST:

11
12 _____
13 Joseph G. R. Labrie, City Clerk

14 I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify
15 that the foregoing ordinance was duly passed at a regular meeting of the City
16 Council of the City of Auburn held on the _____ day of _____ 2011 by
the following vote on roll call:

17 Ayes:

18 Noes:

19 Absent:

20 _____
21 Joseph G. R. Labrie, City Clerk

22 APPROVED AS TO FORM:

23
24
25 _____
26 Michael G. Colantuono, City Attorney

EXHIBIT A

Chapter 121

AGGRESSIVE SOLICITATION

Section

121.01	Definitions
121.02	Aggressive solicitation prohibited
121.03	All solicitation prohibited at specified locations
121.04	Penalty
121.05	Severability
121.06	Non-exclusivity

Section 121.01 Definitions

For purposes of this section:

(A) "Solicit, ask or beg" shall include using the spoken, written, or printed word, or bodily gestures, signs or other means to request an immediate donation of money or other thing of value or to offer the sale of goods or services.

(B) "Public place" shall mean a place to which a substantial group of persons has access, and includes, but is not limited to, any street, highway, sidewalk, parking lot, plaza, transportation facility, school, place of amusement, park, playground, and any doorway, entrance, hallway, lobby and other portion of any business establishment, apartment house or hotel not constituting a room or apartment designed for residence.

Section 121.02 Aggressive solicitation prohibited

(A) No person shall solicit, ask or beg in an aggressive manner in any public place.

(B) "Aggressive manner" shall mean any of the following:

(1) Approaching or speaking to a person, or following a person before, during or after soliciting, asking or begging, if that conduct is intended or is likely to cause a reasonable person to:

(a) fear bodily harm to him- or herself or to another, or damage to or loss of property, or

(b) otherwise be intimidated into giving money or other thing of value;

(2) Intentionally touching or causing physical contact with another person or an occupied vehicle without the consent of that person or an occupant or owner of that vehicle;

(3) Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact;

(4) Using violent or threatening gestures toward a person solicited;

(5) Persisting in closely following or approaching a person, after the person has informed the solicitor by words or conduct that he or she does not want to be solicited or does not want to give money or any other thing of value to the solicitor; or

(6) Using profane, offensive or abusive language that is likely to provoke a violent reaction.

Section 121.03 All solicitation prohibited at specified locations

(A) Banks, Check Cashing, and ATMs. No person shall solicit, ask or beg on public property within 15 feet of any entrance or exit of any bank or check cashing business during its business hours or within 15 feet of any automated teller machine when it is available for customer use. When an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility. No person shall solicit, ask or beg within an automated teller machine facility where a reasonable person would or should know that he or she does not have the permission to do so from the owner or other person lawfully in possession of such facility.

(1) Definitions. For purposes of this section:

(a) "Bank" means any member bank of the Federal Reserve System, and any bank, savings and loan association, credit union, banking association, trust company, savings bank, or other banking institution organized or operated under the laws of California or the United States whether or not the deposit of such institutions are insured by the Federal Deposit Insurance Corporation.

(b) "Check cashing business" means any person licensed as a check seller, bill payer, or prorater pursuant to Division 3 of the California Financial Code, commencing with section 12000.

(c) "Automated teller machine" or "ATM" shall mean any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit, or convenience account.

(d) "Automated teller machine facility" shall mean an area inside a structure in which one or more automated teller machines are located but excluding an area within any structure the primary purpose or function of which is unrelated to banking activities, including but not limited to supermarkets, airports and school buildings.

(B) Motor vehicles. No person shall approach an operator or occupant of a motor vehicle travelling within a public right of way for the purpose of soliciting, asking or begging. A vehicle is "travelling" for this purpose even though stopped at an intersection or otherwise in compliance with traffic control laws and regulations but not if parked legally. This prohibition does not apply to solicitations related to emergency repairs requested by an operator or occupant of a vehicle.

(C) Public transportation vehicles. No person may solicit, ask or beg in any publicly owned or operated vehicle, including a bus, designed, used or maintained for carrying 10 or more persons, including the driver.

Section 121.04 Penalty

An intentional violation of this section is punishable as a misdemeanor pursuant to chapter 10 of this code.

Section 121.05 Non-exclusivity

Nothing in this chapter shall limit or preclude the enforcement of other applicable laws to conduct within the scope of this chapter.